DOCUMENT RESUME

ED 363 180 HE 026 788

AUTHOR Brown, M. Christopher, II; Jackson-Fobbs, Shelia
TITLE Commentary on the United States v. Fordice: An Analysis of Desegregation in Mississippi Higher Education.
PUB DATE [93]
NOTE 16p.
PUB TYPE Viewpoints (Opinion/Position Papers, Essays, etc.) (120)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Black Colleges; *Compliance (Legal); Court Litigation; *Desegregation Litigation; Desegregation Methods; Educational History; Equal Education; Government School Relationship; *Higher Education; Racial Integration; *School Desegregation
IDENTIFIERS *Mississippi; Supreme Court; *United States v Fordice

ABSTRACT

This paper examines the historical background leading to the Supreme Court case of United States vs. Fordice concerning the issue of desegregation in Mississippi's higher education system. The paper focuses on the problems this decision raised regarding eight public colleges that had enrollments and mission statements classifying them as either white or historically black institutions. It reports that compliance with the law may force Mississippi to consider, as educationally justifiable, the closing of institutions in key locations and the impractical merging of institutions that are located hundreds of miles away from each other. The historic successes and continuing contribution of historically black colleges and universities should be documented and stressed in this legal and political fight. If historically black institutions are to be called into question for reasons of desegregation, it is suggested that the existence of other institutions that support some form of exclusivity, such as all male or all female schools and religious schools, must also be questioned. Until then, black universities must continue to build on the success of the underrepresented and serve as social equalizers for the world. (Contains 18 references.) (GLR)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 363 180

COMMENTARY ON THE *UNITED STATES v. FORDICE*: AN ANALYSIS OF DESEGREGATION IN MISSISSIPPI HIGHER EDUCATION

by

M. Christopher Brown, II and Shelia Jackson-Fobbs
Department of Educational Policy Studies and Evaluation
University of Kentucky

HE 026 722

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

M. Christopher Brown, II

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

COMMENTARY
ON THE
UNITED STATES v. FORDICE:
AN ANALYSIS OF DESEGREGATION IN MISSISSIPPI HIGHER EDUCATION

Four decades ago the United States Supreme Court decided that legally mandated segregation was unconstitutional. A few years later James H. Meredith registered at the University of Mississippi under the auspices and firearms of the United States Federal Marshalls. However, in June of 1992 the Supreme Court declared that the higher education system in Mississippi had not desegregated. Their focal question was whether or not the State had disassembled its previous dual system of post-secondary study. The issue with the Court rested in what standards should be utilized to assess this obligation.

It was the consensus of the Supreme Court that no "standard"-based evaluative procedures had been employed in the lower desegregation cases. Moreover, had an identified (i.e., quantifiable) method been applied the lower courts would have ruled that there were traces of *de jure* (by law) segregation in practice. Although the written policies of the State were in compliance with the law, there were several nuances that often predesignated individual choices. These improprieties have led to the easy racial identification of Mississippi universities. The case behind this brouhaha is *UNITED STATES v. FORDICE*.[1]

[1]The name of the original case is *Ayers v. Allain*. The name has changed several times because the case is filed against the governor of the state. The United States has also become a co-plaintiff with Ayers.

The *Fordice* case will establish the judicial precedent for the "desegregation" of higher education across the country. It will outline the financial implications for public historically black colleges and universities in American higher education systems, and address the flexibility of current constitutional standards that allow the federal courts jurisdiction over the processes and justifiability of collegiate institutions' missions and traditions.

The Case

Mississippi higher education dates back to the early 1800's. In 1896, the United States Supreme Court ruled in the case of *Plessy v. Ferguson* that separate was equal. This was overturned by *Brown v. Topeka* ruling in 1954. However, by this time the Mississippi Legislature had created a number of public universities, of which five operated exclusively for white and three for blacks. The federal law mandated that all *de jure* (by law) systems of segregation be dismantled.

Currently, of the seventeen Mississippi universities and colleges that grant bachelor's or advanced degrees and are accredited by the Southern Association of Colleges and Schools, eight remain public. The mission statements and traditional enrollments lead to the classification of five as majority (white) institutions--University of Mississippi, Mississippi State University, Mississippi University for Women, University of Southern Mississippi and Delta State University--and three as minority (black) institutions--Alcorn State University, Jackson State University, and Mississippi Valley State University. In 1981, the mission designations classified three historically white institutions as comprehensive, a historically black institution as urban and the remaining schools as regional (Board of Trustees of State Institutions of Higher Learning, vol. 1, 1992).

The United States Department of Health, Education, and Welfare required that

Mississippi submit a formal plan to dismantle the segregated university system. The Board of Trustees devised a plan which they considered to be in compliance with federal law. However, the Department of Health, Education, and Welfare decided that the State's plan was not sufficient (Board of Trustees, vol. 1, 1992).

In 1975, Jake Ayers, a private plaintiff, along with the United States filed a lawsuit against the state of Mississippi contending that the *de jure* segregation system still existed in higher education. The trial court (1987) and the Fifth Circuit Court of Appeals (1990) ruled in favor of Mississippi, finding that the State had fulfilled its "affirmative duty" to dismantle its prior system by adopting and implementing racially neutral policies and procedures for all students to attend the institution of their choice. The plaintiff appealed to the Supreme Court (W.R. Cleere, personal communication, July 16, 1993).

On June 26, 1992, the Supreme Court reversed and remanded the ruling of the Court of Appeals, declaring that Mississippi had not desegregated its dual system of higher education. The Court also stated that the legal standard applied in the lower level was incorrect, i.e., although the State university system appeared unbiased, there were noticeable factors that governed an individuals choice of institution.

The Court went on to say that Mississippi's eight public universities remained racially identifiable. Therefore, the principle requirement of the State was to eradicate all remnants and vestiges of *de jure* segregation which were not "educationally justifiable" and could be "practically eliminated". The Supreme Court listed the following as "readily apparent" remnants: 1) the existing admissions

policies; 2) the continued maintenance and operation of eight public universities; 3) program duplication; and 4) the institutional mission classifications (*United States v.*

Fordice, 1992).

The Supreme Court denied the initial request of the private plaintiffs "to order the upgrading of Jackson State, Alcorn State, and Mississippi Valley solely so that they may be publicly financed, exclusively black enclaves by private choice." The Court did, however, leave undecided whether any "increase in funding is necessary to achieve full dismantlement under the standards [the Court] outlined" which "must be addressed on remand" (*United States v. Fordice*, 1992).

On the 22nd of October 1992, after extensive oral presentations Judge Neal Biggers, Jr., United States District Judge, directed counsel to submit the "challengeable policies and/or practices" which could be considered remnants of dual systems of higher education. The parties were to confer and stipulate the specific areas on which all agreed on November 19, 1992. If any "practices" remained in question, they too were to be included in the report. However, no agreement could be made.[2]

In response to the order issued by Judge Biggers, the unified plaintiffs and College Board have issued the following proposals to comply with the Supreme Court decision, respectively. The plaintiffs propose 1) continued operation for all eight of Mississippi's public universities; 2) revision of current institutional admissions policies to provide inclusion for all state high school graduates; 3) appropriate minority representation of the College Board; 4) provision of scholarships for underrepresented populations, equally distributed; 5) hiring of minority faculty at predominantly white universities; 6) effective recruitment based on student diversification and physical plant improvements; and 7) redefinition of the role of community colleges as feeder programs opposed to competitors (A. Chambliss,

[2]The parties statements regarding the 1981 mission statements did not appear significantly different.

personal communication, July 20, 1993).

Conversely, the Board proposes 1) close Mississippi Valley State University; 2) the merger of Mississippi University for Women with Southern Mississippi University 175 miles away; 3) the administrative absorption of Alcorn State University[3] by Mississippi State University 200 miles away; 4) Delta State University will merge with the University of Mississippi 100 miles away; 5) Jackson State University take over the Universities Center and receive $34 million for expansion; 6) the closure of University of Mississippi School of Dentistry in Jackson; and 7) the closure of the Mississippi State University School of Veterinary Medicine in Starkvill ("Ayers Plan," 1992).

At the November 1992 hearing both the plaintiffs and the defendants indicated that the other would not provide information pertinent to the case. Therefore, Judge Biggers established a period of discovery for both parties. He scheduled the next meeting for September 13, 1993 in the Oxford Federal Building (M. Jackson, personal communication, July 29, 1993). Judge Biggers further stated that if progress is not made by the September meeting, sanctions would be imposed on both parties.[4] Interestingly enough, the burden is on the State to justify from an "educationally justifiable" view all vestige of *de jure* segregation existing (J. Forester, personal communication, July 20, 1993).

Commentary

Is it "educationally justifiable" to eliminate institution in key locations (e.g. the delta region) and deny the residents the right to an appropriate public education? Is

[3]Alcorn, founded in 1830, is the oldest predominantly black land-grant college in the nation.
[4]Biggers alludes that the sanctions will be on the state.

it "practical" to merge institutions located hundreds of miles away from each other? What will happen to the land and facilities of those institutions that are abandoned?

There have been many different voices heard in the desegregation case for Higher Education in the State of Mississippi. Can there be a solution for age old discriminatory practices? "Students are asking that their positive images not be removed" (J. Brown, personal communication, July 16, 1993). Examples of images may be minority faculty members, administrators, as well as their peers. Members of the Black Legislative Caucus and Rev. Joseph Lowery, President of the Southern Christian Leadership Conference, agree that they will not let any schools be closed. Lowery, as quoted from the Clarion Ledger ("Students Await," 1992), felt that by closing or merging universities is the new system of racism. There aren't any ropes, but the end result is just as devastating.

Many students agreed with Lowery. As a means of showing support, they prayed and sung songs which indicated that there is strength in unity. Lowery spoke for them when he said, "we'll take part in litigation, legislation, agitation, demonstration, and if necessary incarceration" ("Students Await," 1992).

Alvin Chambliss (personal communication, July 20, 1993), chief counsel for the plaintiffs, has offered his own proposals for the Mississippi System, however it has not been approved. He takes the position that the State should continue to operate

all schools and restructure the Community College System. Chambliss' argument is supported by Robert Pressman, Co-Counsel and Nathaniel Douglas of the U.S. Department of Justice.

In the U.S. Supreme Court decision, it was stated that they were not necessarily requiring the State of Mississippi to enhance the funding of historically black institutions, however there are many African Americans who feel that the schools should indeed remain separate. Traditionally, when higher education systems initiate desegregation plans, the minority schools are merged or closed, as proposed in Mississippi (B. Buchanan, personal communication, July 16, 1993). Norman Lockman of the Wilmington News Journal wrote, "African American schools are among few institutions other than black churches where a young African American can be in an environment dominated by other African Americans. It can be an environment that provides shelter, comfort, and networks for blacks.

Justice Clarence Thomas, in a statement as head of the Civil Rights Office of the Education Department regarding the Alabama case stated, "whatever happens from now on, if the black kids decide to go to black school or whites decide to go to white schools, make sure that the kids who decide to go to those black institutions get the best education in the state of Alabama. In the Chronicle of Higher Education, Stephen Halpern (1992), a lawyer and professor of Political Science at State University of New York at Buffalo, concurred that historically black institution have made their most historic educational contribution through their profound commitment to and encouragement of its students. He states that these schools have an outstanding record in developing supportive educational programs that help students succeed once they are admitted.

Nonetheless, throughout all of the confusion that has surrounded the desegregation plan, a form of unity has developed among alumni, students, administrators, citizens, civil rights leaders, and legislators. "All eight universities have pulled together and have dedicated themselves to the cause of preserving all institutions" (M. Jackson, personal communication, July 20, 1993). State

Representative George Flaggs, Jr. stated, "Jackson State University will be one of the winners, but I think it goes beyond winning. I think it will be devastating if we allow the expansion of Jackson State on the closing of Valley State". He, as did other legislators, has asked for the resignation of the Commissioner of Higher Education, W. Ray Cleere ("Students Await," 1992).

It is apparent that the historic successes and continuing contribution of historically black colleges and universities should be documented and stressed in this legal and political fight. Leaders of the traditionally white educational establishment must also join in the campaign supporting these institutions. Programs at historically black universities should serve as models for the other institutions that are striving to improve their success in retaining and graduating minority students.

Research shows that historically black universities have been the primary educators of African Americans. The black institution has historically created pools of qualified individuals who have traditionally been underutilized in academia and corporate America. While it is true that these schools are of great value, they have not convinced society of their importance. There have been many questions raised regarding the strengths of the historically black university. Such questions include, but are not limited to: (1) Is there a supportive social climate that fosters student satisfaction and achievement? Is it impossible for minorities to receive the motivation and nurturing necessary at a majority white institution?

Fleming (1984) states that meeting a student's basic needs during a critical stage of the life cycle is far more important than providing the best facilities. With regard to intellectual activity, the historically black institution has suffered serious financial shortages (i.e., underfunding) which have caused them to be unequal with traditionally white institutions. As a result of the low funding, black colleges are unable to be

competitive for securing qualified faculty. Conversely, both Jones (1971) and Sowell (1972) have suggested that many minority institutions are entrenched in mediocrity. They state that it is therefore extremely difficult for good faculty to remain or for bright students to flourish in the intellectual atmosphere of rote learning and textbook memorization. Meyers (1978) observed that Black students should learn predominantly white environments, based on the integrated nature of society.

Research has documented both the varied negative experiences that black students may have on majority white campuses and its immeasurable effects. Davis and Borders-Patterson (1973) purport that growing mistrust and alienation cause many students to take refuge in institutions reflective of their experiences. Likewise, Chickering (1981) and Weathersby (1981) similarly found that the college experience has the potential to facilitate and stimulate the development of the student. Any sudden changes in the environment may mean a change in the individual.

Therefore, it is important to note, as did Fleming (1984), that there is such a thing as an identity that must be "found" or "resolved" in the best of all worlds. However, developmental theorists have yet to determine how to isolate it and/or study it within the context of the practical college experience.

While interpreting and applying *Fordice* will be an arduous task for the Federal Court and the Department of Education, the desegregation question will not go away. Critics of the historically black college and/or university will continue to ask why we need racially identifiable institutions. The answer today must be "demonstrated excellence without excuse" (Hytche: 1989, p. 17). Furthermore, if the future of the black institution is to be continually called into question, the future of other "traditionally" segregated institutions must be also. We must investigate the large

number of Catholics attending Notre Dame, women at Wellesley, Seventh-day Adventist at Oakwood, Mormons at Brigham Young, and Jews enrolled at Yeshiva and Brandeis. Historically black universities enrich the academy, add to national scholarship, and create atmospheres which epitomize the best of society. Therefore, they must continue to build on the success of the underrepresented and serve as social equalizers for the world.

"...there exists sound educational justification for maintaining historically black colleges...."

Clarence Thomas
Supreme Court Justice

References

Ayers v. Allain, 674 F. Sup. 1523, 1529 [43 Ed.l Law Rep. [972]] (n.D. Miss. 1987).

Ayers Plan: Merge Six, Close Valley. (1992, October 22). Clarion-Ledger p.1.

Board of Trustees of State Institutions of Higher Learning. (1992). The Ayers Decision Volume I.

Board of Trustees of State Institutions of Higher Learning. (1992). The Ayers Decision Volume II.

Brown v. Board of Education of Topeka [Brown I], 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954)

Chickering, A.W. and Associates. (1981). The Modern American College: Responding To The New Realities Of Diverse Students and a Changing Society. San Francisco, CA: Jossey-Bass, 1981.

Davis, J.A. and Borders-Patterson, A. (1973). Black Students in Predominantly White North Carolina Colleges and Universities. Research Report 2. New York: College Entrance Examination Board.

Fleming, Jacqueline. (1984). Blacks in College. San Francisco, CA: Jossey-Bass Publishers.

Halpern, Stephen. (1992, October 28). Black College Would Be Closed In Mississippi's Plan To Comply With Court's Ruling On Desegregation. Chronicle of Higher Education, 39 #10, p. 29A(1).

Hytche, W.P. (1989). A National Resource--A National Challenge: The 1890 Land-Grant Colleges and Universities. Washington, DC: United States Department of Agriculture.

Jones, M. (1971). The Responsibility of the Black College To The Black Community: Then and Now. Daedalus , 100, p.732 - 744.

Lockman, Norman. (1991, September) Ayers Case Is About Quality. Wilmington News Journal , p.3A.

Meyers, M. (1978, December 26). For Civil Rights, No Compromise: Racism and All Black Colleges. Los Angeles Times.

Plessy v. Ferguson, 163 U.S. 537 [(1896)].

Students Await Decision Anxiously. (1992, October 23). Clarion-Ledger p. B 1.

References (continued)

Sowell, T. (1972) Black Education: Myths and Tragedies. New York, NY: McKay.

United States v. Fordice, 112 S.Ct. 2727, 2732, 120 L. Ed. 2d 575 (75 Ed. Law Rep.[81]) (1992).

Weathersby, R.P. (1981). The Modern American College : Responding to the New Realities of Diverse Students and a Changing Society. San Francisco: Jossey-Bass.

Background Data
on the
State of Mississippi

DEMOGRAPHIC PROFILE

In 1990, Mississippi's population was approximately 2,573,000 which was an increase of 2.1 percent since 1980. In regard to the nation as a whole, Mississippi's population is aging: median age in the State rose from 27.7 years in 1980 to 31.2 years in 1990.

Its racial composition consist of 35.6 percent black, which is the largest fraction of any state in the nation. From 1980 to 1990, the black population grew by 3.1 percent as compared to the whites 1.1 percent. Most persons living in Mississippi were born there. The percentage was 77% as of 1990.

As for as education, 11.8 percent are high school dropouts, while 64.3 percent do complete high school. Those that attend college consist of 103,249 whites, 51,901 blacks, and 2,772 other.

The number of persons in poverty is 631,029. Poverty is enhanced through the high percentage rate of female households with no spouse present which is 50.6 percent. Given the multiple disadvantages of these parents, it is likely that they will produce offsprings that will live in poverty as well. Income and poverty figures show that there is a need for provision of more educational services.